

REMARKS/ARGUMENTS

The Status of the Claims.

Claims 19 to 39, and 42 are pending with entry of this amendment. Claims 1 to 18, 40, 41 and 43 to 68 being cancelled. Claims 19 and 37 are amended herein. The amendments introduce no new matter and support is replete throughout the specification. The amendments are made without prejudice and are not to be construed as abandonment of the previously claimed subject matter or agreement with any objection or rejection of record.

With respect to amended claim 19, the claim merely corrects antecedence of the claim. With respect to amended claim 37, the claim has been amended to include the limitation of claim 68 therein.

Applicants submit that no new matter has been added to the application by way of the above amendments. Accordingly, entry of the Amendment is respectfully requested.

35 U.S.C. §112, Second Paragraph.

Claims 19 to 36 were rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite because of a minor issue of antecedent basis. Applicants traverse the finality of the rejection.

The rejection is based on the observation that there is not antecedent basis for the term "members" in independent claim 19.

The rejection can not be considered final. The present Action is the first notice Applicants have received of an objection by the Office to the cited term in the claims. Applicants note that the rejection is not necessitated by any amendments of record. In fact, the objected term was present in the original claims, as filed.

Applicants have amended the claim to provide proper antecedence. Applicants request withdrawal of the rejection for alleged indefiniteness. Because the amendment makes the claims allowable, Applicants respectfully request entry of the amendment.

35 U.S.C. §103(a).

Claims 37 to 39, 42 and 68 were rejected under 35 U.S.C. §103(a) as allegedly obvious based on Lieber (U.S. 7,211,464). Applicants traverse the rejection.

A proper analysis under the recently reaffirmed *Graham v John Deere* standard demonstrates the non-obviousness of the invention. According to the Supreme Court in *KSR International Co v. Teleflex* (550 U.S. ____ (2007); 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385-1396 (US 2007)), the appropriate standard for analyzing questions of obviousness is that:

the scope and content of the prior art are determined, differences between the prior art and the claims at issue are analyzed and the level of ordinary skill in the pertinent art is resolved. Against this background the obviousness or non-obviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unresolved needs, failure of others, etc. might be utilized to give light to the circumstances surrounding the origin of the subject matter to be patented.

Id. quoting *Graham v. John Deere of Kansas City* 383 U.S. 1, 17-18.

The current Examination Guidelines (e.g., MPEP 2143) and *KSR* require the Office in an obviousness rejection to include fact-based findings demonstrating: a citation of facts from the reference teaching each limitation of the claims, and facts showing one of skill would have motivated to modify the cited art as suggested in the rejection.

As a preliminary matter, Applicants note that no case is stated for the rejection of claim 37 which now incorporates the limitations of claim 68 therein, i.e., to recite "wherein the matrix comprises alignment ligands cross-linking and orienting the nanostructures." Careful review of the rejection in the Action at page 3 finds no allegation of the claim 68 limitations. In fact, no case can be made because the cited reference does not teach orientation by alignment ligands, but only alignment by stretching a matrix. Therefore, the rejection must be withdrawn.

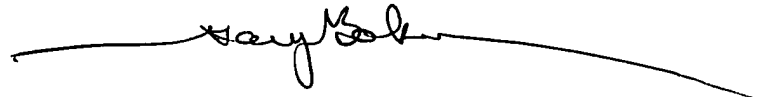
CONCLUSION

In view of the foregoing, Applicants believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the claims are deemed not to be in condition for allowance after consideration of this Response, a telephone interview with the Examiner is hereby requested. Please telephone the undersigned at (510) 769-3510 to schedule an interview.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Baker", is written over a long, thin horizontal line that spans across the signature area.

Gary Baker
Reg. No: 41,595

Attachments:

- 1) A transmittal sheet; and,
- 2) A receipt indication postcard.